SINGLE BENCH (1)

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BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR

IN THE MATTER OF W.P. NO. 1401 OF 2005

PETITIONER : Chhattisgarh Infrastructure Development Corporation, A company registered under the Companies Act, with its Registered Office at Shastri Chowk, Raipur through the Managing Director C.I.D.C. Raipur.

VERSUS

RESPONDENTS

1. Shri Anand Kumar Agrawal, S/o.Late Shri Vinayak Prasad Agrawal, R/o. Purani Basti, Baniyapara, Raipur (C.G.).
2. Appellate authority under payment of Gratuity Act, 1972 Cum Deputy Labour Commissioner Chhattisgarh, Geetanjalinagar, Raipur (C.G.).
3. Madhya Pradesh Road Transport through the Managing Director, Habibganj, Bhopal (M.P.).

P.R. No. 1385/05
Presented by Shri Sameer Bera
dated 31-03-05

PETITION UNDER ARTILCE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT ORDER OR DIRECTION AS DEEMED FIT.

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M.F.R.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3-7-2006

Mr. Pradeep Saksena, counsel for the petitioner.

Mr. Bharat Rajput, counsel for respondent No.1.

Mr. Sanjay Patel, counsel for respondent No.3.

Return has already been filed on behalf of respondent No.1.

Heard learned counsel for the parties for final disposal.

The short question involved in this petition is that in case the employer deposits gratuity amounts as ascertained by the controlling authority under Section 4 (4) of the Payment of Gratuity Act, 1972 (for short 'the Act, 1972') beyond the period of limitation including the extended period of limitation, whether that appeal is to be treated as time barred.

Brief facts leading to filing of this writ petition are that respondent No.1 herein was the employee of respondent No.3 i.e. M.P.S.R.T.C. as Accountant. The services of respondent No.1 were terminated by M.P.S.R.T.C. on 30th April, 2002 which was challenged before the Labour Court and the matter is still pending there. In the mean time, respondent No.1 claimant moved the Controlling Authority, Rajnandgaon, under Section 7 of the Act, 1972 for directing the employer for payment of gratuity. The Controlling Authority vide its order dated 14-5-2003 ascertained an amount of Rs.1,57,535/- as the amount of gratuity payable to respondent No.1 claimant herein and it was further directed that the petitioner herein should pay the said amount within 30 days. The petitioner herein obtained the copy of the said order on 6-6-2003 and preferred an appeal before the appellate authority on 14-7-2003. However, the petitioner herein deposited the gratuity amount

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आदेश पत्रक (पूर्वानुबद्ध)

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on 16-2-2004. The appellate authority on the objection by respondent No.1, vide its order dated 17-3-2005 held that filing of the appeal is to be treated on the date when the gratuity amount was deposited i.e. 16-2-2004, therefore, the appeal was filed after 8 months 10 days, thereby the appeal was filed with the delay of 4 months 10 days and treating the appeal as time barred, dismissed the appeal. The propriety, legality and correctness of the same order has been questioned by way of this writ petition by the petitioner.

Learned counsel for the petitioner argued that copy of the impugned order was made available to the petitioner on 6-6-2003 and he preferred the appeal on 14-7-2003, therefore, the appeal was preferred within time. Even if the gratuity amount was deposited on 16-2-2004 that cannot be taken to be the date of filing of the appeal, as the appeal was already filed by the petitioner on 14-7-2003.

On the other hand, Mr. Rajput, learned counsel for respondent No.1 opposing the argument of learned counsel for the petitioner argued that as per the second proviso of sub-section (7) of Section 7 of the Act, 1972, the appeal is to be entertained and admitted only after payment of gratuity. As per the second proviso to sub-section (7) of Section 7 of the Act, 1972, the petitioner was required to attach a certificate of the controlling authority to the effect that the petitioner has deposited with him an amount equal to the amount of gratuity, which has to be deposited under sub-section (4), or deposited with the appellate authority such amount. Therefore, without depositing the amount, appeal cannot be treated to be filed as per the provisions of sub-

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

section (7) of Section 7 of the Act, 1972. In the circumstances, the appellate authority rightly dismissed the appeal being time barred.

Having heard learned counsel for the parties, I have perused the record. In order to appreciate the arguments advanced by respective counsel it would be profitable to reproduce the provisions of sub-section (7) of Section 7 of the Act, 1972, which deals with filing of appeal.

> "(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:
>
> Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.
>
> Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount."

Perusal of the provisions of sub-section (7) of Section 7 of the Act, 1972, shows that any person aggrieved by an order under sub-section (4) may, within sixty days from the date of receipt of the order can prefer an appeal to the appropriate Government or authority. First proviso to sub-Section (7) of Section 7 further envisages that in case the appellant satisfies

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that he was prevented by sufficient cause from preferring the appeal, further period of sixty days can be extended for filing the appeal. Second proviso to sub-section (7) of Section 7 further provides that no appeal by an employer shall be admitted unless at the time of preferring the appeal, a certificate of the controlling authority regarding depositing the amount is produced or the amount is deposited with the appellate authority.

To my mind, the approach adopted by the appellate authority that the appeal shall be treated to be final only on the deposit of amount is not in consonance with the provisions of sub-section (7) of Section 7 of the Act, 1972. A bare perusal of the provision quoted above shows that main provision of sub-section (7) refers for preferring an appeal, whereas, second proviso envisages that the appeal shall not be admitted unless a certificate regarding deposit of the amount of the controlling authority is produced or the amount is deposited with the authority. So, sub-section (7) and its second proviso deal with different situations. Harmonious interpretation of the above provision i.e. Section 7 is that a person can prefer an appeal before the appellate authority even without depositing the amount. The bar created under proviso to sub-section (7) of Section 7 is that the appeal shall not be admitted unless the certificate of the amount deposited is produced on the date of filing of the appeal or the amount is deposited with the appellate authority. Therefore, admission of the appeal can be deferred till the deposit of the amount. Even if the amount is deposited delayed, the appeal is to be treated as filed on the date when it was filed.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is true that depositing of the amount is a condition precedent for admission of the appeal, but it has not been made so for preferring an appeal under the provisions of Section 7 (7) of the Act, 1972.

In this connection, the question regarding interpretation of sub-section (7) Section 7 of the Act, 1972 came up before the Division Bench of M.P. High Court in the matter of **Janpad Panchayat Masturi, Bilaspur vs. Appellate Authority and Dy. Labour Commissioner & others** reported in **1998 III LLJ (Supp.) HC 163** wherein the aggrieved person preferred an appeal against the order dated 31st December, 1992 and the appellate authority dismissed the appeal on the ground that the appellant failed to deposit the amount of gratuity or produce a certificate of the controlling authority of its deposit. However, later on, the amount was deposited and point was raised by the appellant that the appellate authority was not entitled to dismiss the appeal summarily without affording opportunity to the appellant to make the requisite deposits. The Court allowed the submission and passed order that the petitioner to make suitable application along with the requisite deposit or a certificate in terms of second proviso to sub-section (7) of Section 7 of the Act before the appellate authority and then the appellate authority to consider admission of the appeal and its hearing on merits, after due notice to the parties.

In view of the foregoing discussion, I am of the considered opinion that the impugned order passed by the appellate authority is not in consonance with the provisions of Section 7 (7) of the Act, 1972, same is liable to be set aside and it is hereby set aside. The appellate authority is directed to decide the

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appeal on its own merit, after hearing all the parties concerned. Parties are directed to appear before the appellate authority on **21st August, 2006**. It is expected that the appellate authority will decide the appeal within a period of three months from 21st August, 2006.

Registry to send a copy of this order to the appellate authority by day after tomorrow.

With the observations and directions aforesaid, the petition stands disposed of.

Consequently, M.(W.)P.No.1342/2006 and I.A.No.1560/2006 also stand disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Soma

10.7.06